

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

DEBORA D. TANNER, ET AL.,

PLAINTIFFS,

V.

CITY OF SULLIVAN, ET AL.

DEFENDANTS.

CASE No.: 4:11-CV-01361-NAB

JURY TRIAL DEMANDED

**DEFENDANTS' MOTION TO EXCLUDE AND STRIKE PROFFERED TESTIMONY OF
PLAINTIFFS' PROPOSED EXPERT, JEFFREY EISER**

Come now Defendants, City of Sullivan, Chief George Counts, Darrin Jones, Jeff Rohrer, Don Reed, Kevin Halbert, and Shaun Hinson, and, pursuant to Rules 104(a) and 702 of the Federal Rules of Evidence, hereby move to exclude and/or strike the proffered testimony of Jeffrey Eiser. Defendants incorporate by this reference their Memorandum in Support filed herewith.

Background

Plaintiffs filed this lawsuit in the aftermath of the suicide of Karen Palmer while in custody at the Sullivan Police Department Jail (Sullivan PD) located in Sullivan, Missouri. Defendants include the City of Sullivan, George Counts (the Chief of Sullivan PD), Kevin Halbert (dispatcher), and the following patrolmen, Darrin Jones, Jeff Rohrer, Don Reed, David Roche,¹ and Shaun Hinson.

In the Second Amended Complaint (Doc. 67) Plaintiffs assert violation of 42 U.S.C. § 1983 (Count I) and Missouri Revised Statute §537.080, which is the Missouri Wrongful Death statute (Count II). In January of 2012, Plaintiffs endorsed Jeffrey Eiser as an expert expected to testify

¹ Defendants' filed their Suggestions of Death of Defendant David Roche (Doc. 342) and opposed Plaintiffs request to substitute Mr. Roche's spouse in his place. Should the Court overrule Defendants, Mr. Roche's estate is entitled to summary judgment based upon the arguments outlined herein.

regarding the criminal justice and jail operations related to the treatment of Karen Palmer. In April of 2012, Plaintiffs produced to Defendants Mr. Eiser's expert report. And on May 4, 2012, Defendants took the deposition of Mr. Eiser.

Argument

The grounds for Defendants' Motion are as follows:

1. Mr. Eiser's "expert opinion" is not based on a scientific method and extends to the ultimate legal issue of whether the officers' conduct was objectively reasonable under the Fourteenth Amendment, which is for the jury to decide.
2. Mr. Eiser's opinions regarding the cause of the decedent's suicide lacks foundation and are otherwise unreliable due to the fact that his "opinions" do not assist the jury in any way.

WHEREFORE, Defendants, City of Sullivan, Chief George Counts, Darrin Jones, Jeff Rohrer, Don Reed, Kevin Halbert, and Shaun Hinson, respectfully request the Court to enter an order excluding the expert report and proffered testimony of Plaintiffs' expert, Jeffrey Eiser, and for such further relief as the Court deems necessary under the circumstances.

/s/ Benjamin M. Fletcher

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CERTIFICATE OF SERVICE

I hereby certify that on September 26, 2012 I electronically filed Defendants' Motion to Exclude and Strike Proffered Testimony of Plaintiffs' Proposed Expert, Jeffrey Eiser, and the Memorandum in Support with the Clerk of Court using the CM/ECF system which will send notification of such filing(s) to all parties/attorneys of record.

/s/ Benjamin M. Fletcher